

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Silvio R. Illescas,

Petitioner,

-against-

Thomas Griffin,

Respondent.
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ORDER

17 Civ. 5385 (VB) (AEK)

THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.

On January 11, 2021, Petitioner filed a “Motion for Reconstruction Hearing.” ECF No. 71 (“Reconstruction Motion”). In the motion, Petitioner contends that the transcript of the court conference held on November 25, 2019 contains several errors, and he requests that the Court either conduct a “reconstruction hearing” or order the court reporter “to make the proper correction in the teleconference minutes.” Id. at 5. The motion lists what Petitioner believes to be the errors in the transcript by page and line number, and provides the wording that Petitioner claims should be in the transcript instead. Id. at 2-5. Petitioner states that during the conference, he “made mention of several United States constitutional violations and also read it [sic] several points and issues pertaining his case from a sheet of paper . . . that was prepared by his legal assistant.” Id. at 1. Petitioner’s legal assistant, fellow inmate Rudy Roa, submitted a sworn statement explaining that because of Petitioner’s “language barrier,” Roa “personally wrote out, word for word, several United States and New York State Constitutional violations committed in Mr. Illescas[’] case for him to read to the Court on the record.” Id. Ex. 1. Roa’s handwritten notes are attached as an exhibit to the Reconstruction Motion, see id. Ex. 2, and most of the corrections that Petitioner is seeking are intended to conform the transcript to the contents of

Roa's handwritten notes, which Petitioner does appear to have attempted to present during the conference. Compare id. Ex. 2 with id. Ex. 3 (conference transcript) at 9-12.

In response to the motion, Respondent points out that the transcript attached to Petitioner's motion "does not include a certification by the Court Reporter, which would normally attest to the truth and accuracy of the transcript" and that Respondent "has no way of ascertaining the accuracy of the transcript" without such a certification. ECF No. 78. Nonetheless, Respondent states that "barring any attempt to supplement or amend his petition, Respondent has no objection to Petitioner clarifying any points he was attempting to make at oral argument." Id.

Petitioner filed a letter in reply in which he states that he "is not in any way attempting to amend or assert any new claims." ECF No. 80. Rather, through the Reconstruction Motion, Petitioner seeks "to clarify the many inconsistencies of his federal habeas corpus petition," and he requests that the Court "order a certified copy of the transcripts [sic] before making a determination of his habeas petition." Id.

Because Petitioner is not seeking to amend his Petition either to add any new claims or to amend any existing claims, and because Respondent has no objection to Petitioner clarifying the points he was trying to make during the conference, there is no reason for the Court to order a certified copy of the transcript for the November 25, 2019 conference. The Court accepts all of Petitioner's proposed changes to the transcript from his Reconstruction Motion, see id. at 2-5 and will consider these points along with all of the other arguments made by Petitioner in the papers filed in support of his habeas petition.

In light of this, there is no need for the Court to conduct a "reconstruction hearing," nor is there any need to direct the court reporter to make any changes to the transcript of the November

25, 2019 conference. Accordingly, because the Court will not grant any of the relief requested in the Reconstruction Motion, the Reconstruction Motion (ECF No. 71) is hereby DENIED.

The Clerk of the Court is directed to mail a copy of this order to Pro Se Petitioner.

Dated: May 7, 2021
White Plains, New York

SO ORDERED.



ANDREW E. KRAUSE
United States Magistrate Judge